

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Spectrum Sharing Plan Among)	
Non-Geostationary Satellite Orbit Mobile)	IB Docket No. 02-364
Satellite Service Systems in the 1.6/2.4 GHz)	
Bands)	
)	
Amendment of Part 2 of the Commission's)	ET Docket No. 00-258
Rules to Allocate Spectrum Below 3 GHz for)	
Mobile and Fixed Services to Support the)	
Introduction of New Advanced Wireless)	
Services, including Third Generation Wireless)	
Systems)	

To: The Commission

**OPPOSITION OF
BELLSOUTH CORPORATION, BELLSOUTH WIRELESS CABLE, INC. AND
SOUTH FLORIDA TELEVISION, INC. TO
PETITION FOR RECONSIDERATION OF GLOBALSTAR LLC**

BellSouth Corporation and its wholly-owned subsidiaries BellSouth Wireless Cable, Inc. and South Florida Television, Inc. (collectively, "BellSouth") hereby: (1) oppose the Petition for Reconsideration ("Globalstar Petition") filed by Globalstar LLC ("Globalstar") in the above-captioned proceeding¹ asking the Commission to impose restrictions on the rights of Broadband Radio Service ("BRS") licensees;² and (2) support the Petition for Reconsideration filed by the Wireless Communications Association International, Inc. ("WCA").³ If adopted, Globalstar's proposed restrictions would

¹ Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, *Report and Order, Fourth Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 13356 (2004) ("*Order*"). Notice of the filing of petitions for reconsideration of the *Order* was published in the Federal Register on October 12, 2004. *See* 69 Fed. Reg. 60626-27 (2004).

² Petition for Reconsideration of Globalstar LLC filed September 8, 2004 ("Globalstar Petition").

³ Petition for Reconsideration of the Wireless Communications Association International, Inc. filed September 8, 2004 ("WCA Petition").

contravene Commission policies, result in debilitating interference to BRS-1 licensees, and effectively preclude use of BRS spectrum in the 2496-2502 MHz band. For the reasons stated herein, the Commission should reject Globalstar's proposal and instead should adopt WCA's proposal to eliminate the co-primary allocation for CDMA Mobile Satellite Service ("MSS") in the 2496-2500 MHz band.

Background

BellSouth is an existing MMDS/ITFS operator with significant spectrum holdings in a number of urban and rural markets throughout the southeastern United States. BellSouth holds licenses for Channel MDS-1 at Atlanta, Georgia; Daytona Beach, Florida; Fort Myers, Florida; Lake City, Florida; Miami, Florida; and Louisville, Kentucky.⁴ In addition, BellSouth holds Basic Trading Area ("BTA") rights in six BTAs where it has the exclusive right to file for new BRS-1 stations.⁵

Since initially entering the business in 1996, BellSouth has expended millions of dollars in engineering, equipment and operational costs to convert analog video systems to digital video systems, and is expending additional resources to conduct wireless broadband access trials in the Atlanta, Georgia, Daytona Beach, Florida and Palatka, Florida markets. BellSouth actively supported the rule changes in the recent order "rebanding" the MMDS/ITFS spectrum and making other fundamental changes to the regulatory structure and operational rules for those services.⁶

⁴ Call Signs WQR43 (Atlanta, Georgia); WLK243 (Daytona Beach, Florida); KNSC799 (Fort Myers, Florida); KNSD905 (Lake City, Florida); WLJ79 (Miami, Florida) and KOA86 (Louisville, Kentucky).

⁵ BTA B024 (Atlanta, Georgia); B107 (Daytona Beach, Florida); B151 (Fort Myers, Florida); B212 (Jacksonville, Florida); B239 (Lakeland, Florida); and B336 (Orlando, Florida).

⁶ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) ("*BRS/EBIS Order*"). The Commission changed the name of the service from Multipoint Distribution Service ("MDS") to Broadband Radio Service ("BRS") and changed the name of the Instructional

In this proceeding, the Commission reallocated the 2495-2500 MHz band to fixed and mobile services (except aeronautical mobile services) on a primary basis in recognition of the public interest benefits of integrating the BRS-1 spectrum into a contiguous BRS/EBS band. The Commission stated that:

The allocation will allow us to group together spectrum “neighbors” with technically compatible characteristics. . . . Doing so allows us to integrate the spectrum at 2495-2500 MHz into a larger 2495-2690 MHz band plan and, as a result, establish a new BRS/EBS band plan and adopt service rules for both the 2495-2500 MHz and 2500-2690 MHz band that will allow for the provision of similar services.⁷

Moreover, the reallocation of BRS-1 (and BRS-2) spectrum was not voluntary or the result of an auction, but rather was derived from the Commission’s decision to relocate MDS-1 and MDS-2/2A licensees from the 2150-2160/62 MHz band in order to accommodate Advanced Wireless Services spectrum.⁸

Regarding this relocation, the Commission believed that CDMA MSS licensees providing downlink operations in the 2495-2500 MHz band should be able to share this spectrum with BRS-1 licensees, creating a scheme in which CDMA MSS and fixed and mobile services (except aeronautical mobile services) would have co-primary status. Despite the absence of any supporting documentation in the record, the Commission concluded that:

Television Fixed Service (“ITFS”) to the Educational Broadband Service (“EBS”). BellSouth filed Comments on September 8, 2003 and Reply Comments on October 23, 2003.

⁷ Order, ¶69.

⁸ See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, *Second Report and Order*, 17 FCC Rcd 23193, 23212-13 (2002) (reallocating 2150-2155 MHz, but deferring identification of replacement spectrum); Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, *Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223 (2002) (“AWS Third Order”) (reallocating 2155-2160/62 MHz but deferring identification of replacement spectrum).

CDMA MSS operators can share this spectrum with BRS operators since BRS operations are likely to be in urban, suburban and somewhat developed rural areas while the greatest demand for CDMA MSS operations is likely to be in very rural and undeveloped areas with little or no existing communications infrastructure.⁹

Both Globalstar, the sole CDMA MSS operator, and WCA, representing BRS interests, independently demonstrated that the Commission's solution will result in harmful co-channel, co-coverage interference.¹⁰ Though they agree on this point, they sharply disagree on how this "mutually-destructive" situation should be resolved.¹¹ On one hand, WCA has asked the FCC to remove the co-primary MSS downlink allocation from the 2496-2500 MHz band. According to WCA and others, including Sprint Corporation and Nextel Communications, Inc.,¹² the co-primary designation of those frequencies would result in "debilitating"¹³ interference and would be contrary to previous FCC findings that satellite downlink and terrestrial systems cannot co-exist on the same frequencies.¹⁴ WCA also demonstrated that Globalstar, the only CDMA MSS operator, would retain a sufficient amount of spectrum if the MSS co-primary allocation were removed from the 2496-2500 MHz band.¹⁵

On the other hand, Globalstar proposed to address the problem by limiting BRS-1 operations to the top 35 Metropolitan Statistical Areas ("MSAs") and, in those 35 MSAs, by reducing BRS base station power from 2000 watts EIRP to 600 watts EIRP and

⁹ *Order*, ¶72. *See also* Globalstar Petition, p. 11 ("the assumption that BRS operations in the 2496-2502 MHz band are more likely to occur in urban areas is flawed, because the current MDS-1 licensees that will move into the band are already licensed nationwide"). The Commission also moved the upper boundary of the MSS ancillary terrestrial component allocation from 2500 MHz to 2495 MHz to better protect BRS-1 operations.

¹⁰ WCA Petition, p. 5 and Technical Appendix ; Globalstar Petition, p.14 and Technical Appendix.

¹¹ WCA Petition, p. 9.

¹² *See* Sprint Petition for Partial Reconsideration, filed September 8, 2004; Petition for Reconsideration of Nextel Communications, Inc., filed September 8, 2004.

¹³ WCA Petition, p. 15.

¹⁴ *Id.*, pp. 9-11.

¹⁵ *Id.*, pp. 12-14.

limiting out-of-band BRS-1 emissions, for 99% of the time, to an aggregate not to exceed -209 dBw/Hz at any point outside of the 35 MSAs in the 2483.5-2500 MHz band.¹⁶

The Commission should reject Globalstar's proposal and, as urged by WCA, eliminate the co-primary allocation for CDMA MSS in the 2496-2500 MHz band. Globalstar's proposal would have dire consequences for BellSouth and other BRS-1 licensees. Adopting Globalstar's plan would eliminate BellSouth's ability to continue using its BRS-1 channels in at least four markets, dramatically reduce BellSouth's ability to use its BRS-1 channels in Atlanta and Miami, and prevent BellSouth from ever deploying BRS-1 service in numerous rural communities and sparsely populated areas within its authorized BTAs. Adopting Globalstar's plan also would contravene Commission policies designed to ensure that incumbent licensees forced to relocate to replacement spectrum are no worse off than they were before.

Discussion

As described above, there is little doubt that the Commission's decision to permit MSS operators and BRS-1 licensees to share spectrum on a co-primary basis is flawed and would result in harmful interference to the operations of both. But Globalstar's proposed solution to essentially eliminate meaningful use of BRS-1 would be patently unfair and would contravene existing Commission policy, to the detriment of BellSouth and other incumbent licensees using the spectrum to serve the public.

In the *AWS Further Notice*, consistent with Commission policies,¹⁷ the Commission proposed that MDS-1 licensees required to relocate should "be entitled to

¹⁶ See Globalstar Petition, p. 12.

¹⁷ See, e.g., Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, *Second Report and Order*, 8 FCC Rcd 6495, 6506 (1993).

comparable facilities and/or adequate replacement spectrum.”¹⁸ Under this policy, “incumbents must be provided with replacement facilities that allow them to maintain the same service in terms of throughput, reliability and operating costs.”¹⁹ Similarly, in adopting relocation rules for the microwave service, the Commission announced that its “goal is to ensure that incumbents are no worse off than they would be if relocation were not required.”²⁰

Globalstar’s proposal would turn this policy upside down. Rather than ensuring that BRS-1 incumbents would be “no worse off,” its proposal would assure that every incumbent is decidedly worse off. Limiting BRS-1 operations to the top 35 MSAs would render useless BellSouth’s licensed spectrum in all of its markets, except Atlanta and Miami. And in those markets, the technical restrictions proposed by Globalstar would sharply curtail BellSouth’s ability to provide service to the public. In its BTAs, where BellSouth enjoys the exclusive right to file for new BRS-1 sites, BellSouth also would be precluded from establishing new services on BRS-1.²¹ Many of these BTAs cover rural areas, and Globalstar’s proposal would contravene the Commission’s statutory goals to encourage broadband deployment in rural America. Taken together, Globalstar’s proposals would severely limit BellSouth’s ability to continue to provide service and prevent it from initiating service in new areas in BellSouth’s BTAs.

¹⁸ Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 16043, 16061 (2001) (“AWS Further Notice”).

¹⁹ *AWS Third Order*, p. 2256.

²⁰ See Amendments to the Commission’s Rules Regarding a Plan for Sharing Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8825, 8843 (1996).

²¹ In the *BRS/EBS Order*, the Commission confirmed that “where an existing license is canceled or forfeited, the right to operate in that area automatically reverts to the licensee that holds the corresponding BTA license.” *BRS/EBS Order*, ¶54.

Likewise, the Commission's decision to require sharing of the BRS-1 spectrum with MSS downlink spectrum is inconsistent with the "no worse off" policy. In essence, the Commission in this proceeding has substituted a primary allocation with a co-primary allocation. Its premise for doing so – the assumption that BRS would be deployed in "urban, suburban and somewhat rural" markets and MSS downlink facilities would be deployed in rural areas – is not supported by the record and, in fact, is wrong. As even Globalstar recognizes, MDS-1 stations are licensed across the nation, including many rural areas. Aside from Commission policies on spectrum relocation, the decision to reduce a primary allocation to a co-primary allocation cannot rest on an incomplete record or a false assumption.

Globalstar has been on notice for ten years that the MSS allocation could be reduced. In its Petition, WCA quoted the following Commission passage:²²

In the unlikely event that only one CDMA system is implemented, we propose to reduce the bandwidth assigned to that system from 11.35 MHz to 8.25 MHz, even if some of the system's space stations are in-orbit and operating. An 8.25 MHz assignment should be sufficient to implement a viable system and should also provide us with some flexibility when coordinating the system. It may also provide some room for expected growth.²³

The "unlikely event" has occurred – Globalstar is the only remaining CDMA MSS licensee, and thus has no need for the full amount of spectrum originally allocated for CDMA MSS facilities. As a result, the Commission in the *Order* required 3.1 MHz of uplink spectrum in the 1.6 GHz band previously allocated solely to CDMA MSS uplink facilities to be shared with TDMA MSS, thereby reducing the primary uplink spectrum

²² See WCA Petition, pp. 12-13.

²³ Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, *Notice of Proposed Rulemaking*, 9 FCC Rcd 1094, 1112 (1994).

allocation to 8.25 MHz. Globalstar itself has stated – and the Commission in the *Order* agreed – that CDMA Big LEO operators require only 1.4 MHz of downlink spectrum for every 1 MHz of uplink spectrum.²⁴ Applying this ratio, and consistent with WCA’s proposal, Globalstar requires only about 11.5 MHz of downlink spectrum, not the full 16.5 MHz at 2483.5-2500 MHz. The extra 5 MHz at 2495-2500 MHz should not be shared with BRS-1, as the Commission concluded, but should instead be allocated on a primary basis to BRS.

Nowhere does Globalstar contend that 11.5 MHz of downlink spectrum is not “sufficient.” In fact, WCA’s proposed solution would allow Globalstar to effectively provide service to its customers, in stark contrast to its proposal that would cripple BRS-1 licensees.

BellSouth believes that the primary allocation of BRS-1 spectrum to the 2496-2502 MHz band is the best solution to the interference that sharing would create, and supports the Commission’s decision to place this spectrum in the contiguous BRS/EBS allocation at 2495-2690 MHz. Globalstar’s proposal to greatly restrict BRS-1 operations is contrary to the Commission’s laudable efforts to find new spectrum for displaced MDS-1 and MDS-2/2A licensees and also is not legally sustainable. Aside from eliminating the co-primary allocation of MSS downlink spectrum in the 2496-2500 MHz band as proposed by WCA, there are no other viable solutions – the record in the *BRS/EBS Order* makes clear that the Commission considered and rejected numerous alternatives for relocating BRS spectrum, and found only one.²⁵ It should now take the logical next step, consistent with established policy, and eliminate the co-primary

²⁴ See *Order*, ¶66.

²⁵ See *BRS/EBS Order*, pp. 14-15.

allocation for CDMA MSS in the 2496-2500 MHz band to facilitate the introduction of broadband services on BRS-1 spectrum.

Conclusion

In light of the foregoing, BellSouth respectfully requests that the Commission reject Globalstar's proposal and instead eliminate the co-primary allocation for CDMA MSS in the 2496-2500 MHz band.

Respectfully submitted,

**BELLSOUTH CORPORATION,
BELLSOUTH WIRELESS CABLE, INC. and
SOUTH FLORIDA TELEVISION, INC.**

October 27, 2004

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